



MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

MAILED

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OFFICE OF PETITIONS

In re Patent of Ronald L. Mahany et al.	:	DECISION ON REQUEST
Patent No. 7,606,575	:	FOR RECONSIDERATION OF
Issue Date: October 20, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/057,816	:	AND NOTICE OF INTENT TO
Filing Date: January 24, 2002	:	ISSUE CERTIFICATE OF
Attorney Docket No. 14419US01	:	CORRECTION

This is a decision in response to the “Request for Reconsideration of USPTO Recalculation of Patent Term Adjustment in View of *Wyeth*” filed May 21, 2010, stating the correct patent term adjustment is one thousand two hundred nineteen (1219) days.

The request for reconsideration of the patent term adjustment is **dismissed**.

The patent issued October 20, 2009. The patent term adjustment indicated on the patent was 675 days.

A “Request for Recalculation of Patent Term Adjustment in View of *Wyeth*” was filed March 31, 2010.

On April 21, 2010, the Office issued a decision in response to the March 31, 2010 request. The decision indicated the Office planned to issue a certificate of correction indicating the term of the patent is extended or adjusted by one thousand two hundred eighteen (1218) days.

The instant request was filed May 21, 2010, and asserts the correct number of days of patent term adjustment is 1219 days.

Patentees’ basis for asserting the correct number of days of patent term adjustment is 1219 days is extremely unclear. Patentees essentially assert the patent term adjustment is 1219 days because the filing date for the application is January 24, 2002, the date three years after the filing date is January 24, 2005, and the date a request for continued examination was filed is March 20, 2008. The Office will *assume* Patentees are arguing the patent term adjustment should be greater than one day based on a belief the period of delay under 35 U.S.C. § 154(b)(1)(B) (“B Delay”) is 1151 days instead of 1150 days.

Pursuant to 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include any time period consumed by continued examination. Although Patentees appear to recognize the need to exclude a time period due to the filing of a request for continued examination from the period of B Delay, Patentees *appear* to have failed to recognize the actual date the RCE was filed is part of the time that must be excluded. Excluding the date the RCE was filed from the period of B Delay, results in B Delay of 1150 days, not 1151 days.

In view of the prior discussion, the instant request fails to establish the patent term adjustment should be 1219 days instead of 1218 days.

As stated in the prior decision mailed April 21, 2010, a certificate of correct indicating the patent term adjustment is 1218 days will be issued.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred eighteen (1218) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,606,575 B2
APPLICATION NO. : 10/057,816
DATED : October 20, 2009
INVENTOR(S) : Ronald L. Mahany et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 595 days.

Delete the phrase "by 595 days" and insert -- by 1218 days--